(2)

IN THE SUPREME COURT OF THE UNITED STATES

FILED
JUN 14 2007
OFFICE OF THE CLERK
SUPREME COURT, U.S.

INDEX No: 06-1272

RICHARD A. SCOCCA JR

Petitioner

v.

CENDANT MORTGAGE CORPORATION,
f/h/a PHH US MORTGAGE CORPORATION

Respondent

MOTION FOR REHEARING ON PETITION FOR WRIT OF CERTIORARI TO THE THIRD CIRCUIT-COURT OF APPEALS

RE: Civil Action Index No. **2:04-cv-00704-SD**
Third Circuit-Court Appeal No. **06-2477**

Dr. RICHARD A. SCOCCA JR
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----- *QUESTIONS* -----

1) Can a **Clerk** of the 3rd Circuit Court refuse to enter or negligently omit a **timely** ***'Petition for Rehearing'*** filed electronically?

2) Can a Single *SENIOR* 3rd Circuit Judge, deny a timely filed *'Motion to File a Petition for Rehearing Out-Of-Time'* without panel review?

Parties to the Proceedings

The parties to the proceedings in the Pennsylvania Court of appeal included Cendants Mortgage Corporation and petitioner Richard A **Scocca** Jr. there are no parties to the proceeding other than those named in the petition.

Petition for *Rehearing* of Writ of Certiorari

The petitioner, Richard A **Scocca** Jr respectfully petitions this Court for rehearing of his writ of certiorari to review the ORDER of the Pennsylvania Court of appeal.

Opinions Below

Attached as Appendix (one-page ORDER) is the subject of this petition entered 25 October 2006 by the single Senior 3rd Circuit-Court Judge Van Antwerpen, denying a '***Motion to file a Petition for Rehearing (out-of-time)***'.

Jurisdiction

Scocca's [Writ of Cert. US. 06-1272] **was timely filed.** The decision of the Supreme Court to deny, was entered 21 May 2006; this Petition for Rehearing is within 25 days of that date.

Petitioner invokes this Court's jurisdiction under 28 U.S.C. §2072(a). The Supreme Court shall have the power to prescribe general rules of practice and procedure and rules of evidence for cases in the United States Courts of appeals and 28 U.S.C. §1254(1). ***(see Scocca's [Writ of Cert. US. 06-1272 (pg. 1-3)]***

Statement of Issues

Clerk either refused to enter or negligently omitted documents filed with the court

The 3rd Circuit Court entered their opinion on 25 September. The **Clerk** (***Rule 25(a)***) either refused to enter or negligently omitted, **Scocca**'s **timely** *(10 October 2006)* ***'Petition for Rehearing'*** ***filed electronically*** and hardcopies sent via international (ARUBA) airmail.

Instead, the **Clerk** issued a letter of non-compliance on the due date for a response; *(16 October 2006)* also ignoring the hardcopies(10) received on that same date (**postmarked** ***10*** **October 2006**). The postmark of ***10 October 2006*** is only relevant in that it shows

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Rule 25 (a)(2)(D) presently authorizes the Courts of appeals to permit papers to be **filed** by electronic means. **Rule 25** has been amended in several respects to permit papers also to be **served electronically**. In the 3rd circuit-Court of appeal, an electronically filed petition for rehearing should be directed to electronic address: ***petitions_rehearing@ca3.uscourts.gov;*** which **Scocca** overlooked and on 10 October 2006 mistakenly used the electronic address previously used for his Briefs, ***electronic_briefs@ca3.uscourts.gov***. Both of which are directed to the same location, the difference, effect the distribution to 'a' particular clerk; at that point it is **entirely under Human control.** ***(see Scocca's [Writ of Cert. US. 06-1272 (pg. 5&20-22)]***

Single *Senior* Judge DENIED a 'Petition for Rehearing *(out-of-time)*' *without panel review*

On *25* October 2006, **Scocca** **timely** (***electronically***) **filed** his ***'Motion to File a Petition for Rehearing Out-Of-Time'*** in compliance with the **Clerk's** letter. That **same day** (*25* October) this Single (***SENIOR***) 3rd Circuit Judge(Van Antwerpen) and the **only** Circuit Judge present, **denied** his ***'Motion'*** **without panel review,** knowing that the 3rd Circuit Appellate Court traditionally grants *petitions for rehearing out-of-time.* ***(see Appendix 'A') (see also Scocca's [Writ of Cert. US. 06-1272 (pg. 4-9)]***

> "we generally consider a motion to file a petition for rehearing 'out of time' reasonable when the request is made within the ninety-day period for filing a petition for writ of certiorari. Likewise, we generally consider a delay unreasonable when the motion is made after the ninety-day period has expired. Nonetheless, as is **our traditional practice**, we deemed his petition as a "motion to file petition for rehearing out of time",

and **granted** it." ***United States v. Wall, Nos. 042380, 052019 3d cit 2006***

This *SENIOR* 3rd Circuit Judge(Van Antwerpen) knew or should have known that any petition for rehearing out of time if denied, must be presented to the 3rd circuit panel for review and decision. Since this decision was made on the **same day** it was received by the Court and this Senior Judge was the **only** Circuit Judge present, ***'panel review'*** **was physically and logistically impossible; therefore, could not have been accomplished.** ***(see Scocca's [Writ of Cert. US. 06-1272]***

The principal issue raised is whether a single circuit judge in *senior* status has jurisdictional authority to deny a '*motion for leave to file petition for rehearing out-of-time* without review of the Circuit Court. Specifically, it implicates the practice of permitting a single Judge with the power to dismiss an appeal with errors or at all, contrary to ***Rule 46(c). (see Scocca's [Writ of Cert. US. 06-1272 (pg.42-46)]***

Within the general consideration of procedure on motions is the problem of the power of a single circuit judge. Certain powers are granted to a single judge of a Court of appeals by statue. (see ***FRAP rule 27(c))*** This section preserves the interpretation established by the ***Textile Mills*** case but provides in subsection *"(c) that cases shall be heard by a Court of not more than three judges unless the Court has provided for hearing en banc."* This provision continues the tradition of a three-judge appellate Court and makes the decision of a division, **the decision of the Court**, unless rehearing en banc is ordered. Subsec.(c) Pub.L.97-164, §§103(c), 205. except that any senior circuit Judge of the circuit shall be **eligible to participate**, at his election and upon designation and assignment pursuant to section **294(c)** of this title and the rules of the circuit, as a member of the en banc court reviewing a decision of a panel of which such judge was a member, continue to participate in the decision of a case or controversy '**that was heard** or reheard by the Court **en banc** at a time **when such Judge was in regular active service'**.

We need not decide which Rule controls the present case, because neither authorizes a single Judge's action here. Furthermore, those various sections of the Judicial Code provide that each of these functions shall be performed by the Court. ***(see Scocca's [Writ of Cert. US. 06-1272 (pg. 12-19)]***

Pursuant to Rule 27(c). the 3rd Circuit Court of Appeals made it clear in **IOP 10.8.1** that the authoring Judge has authority to **grant** a 'motion for rehearing out-of-time' and just as clear, **only** the Circuit Court **may act when the authoring judge votes to deny** the motion. Furthermore, it **must be** referred to the **entire(active) panel for disposition.** ***(see Scocca's [Writ of Cert. US. 06-1272 (pg. 23-29)]***

In fact, this Single Judge, Judge Van Antwerpen, **was** the authoring Judge **until** ***23 October 2006***. but at the time of this motion, ***(26 October 2006)*** a **Senior Judge;** he **DID NOT** *have the authority to enter any decision*; **NEITHER** to ***Grant*** **or** to ***Deny*** a motion out-of-time. Further, this ***non-active*** Judge **may only enter** an answer, order or opinion(etc) ***transmitted from*** the Chief Judge, an active Judge or the panel. In addition, only and **strictly in an administrative capacity.** ***(see IOP 9.5.6 and 9.5.8 and Appendix 'A')***

It is well established in the 3rd Circuit Court to treat every post-decision proceeding **as both** a Petition for Rehearing and Rehearing '***en banc***'. ***(see IOP 9.5.1)***

Since, **only active Judges may vote on En Banc** and any Senior Judge **NOT qualified** *at the time of the poll, is not eligible to vote,* as a result, this order which denied the motion for *Rehearing Out-Of-Time* **also denied the Petition for Rehearing.** Furthermore, this order by Judge Van Antwerpen is ***jurisdictionally failed,*** pursuant to ***28 USC §46(c). (see IOP 9.5)***

The Supreme Court stands as the last resort in adjudication of the issues litigated. The petitioner was entitled to have this portion of the record included, and that the Circuit Court of Appeals had jurisdiction, but was ***administratively eliminated***. This Court has to entertain this writ of cert as the ***'Circuit Police'***, not for the purpose of passing on the merits, but to direct the reformation/correction of the Judicial System. The question before the Supreme Court is not whether you, as Supreme Court Justices, would have come to the same conclusions, as did the Single Senior Judge, ***It is whether the 3rd Circuit Court abused their discretion to allow Scocca's 'Motion for Rehearing out-of-time' to be denied without review.*** *(see* also ***Scocca's [Writ of Cert. US. 06-1272 (pg. 1-30)]***

Certification of Restrictions

The grounds for this ***Petition for Rehearing*** contain intervening circumstances of a substantial or controlling effect or other substantial grounds not previously presented; it is presented in good faith and not for delay and meets the required line and word count.

28 USC § 1746 Declaration Under Penalty of Perjury

Wherever, under any law of the United States or under any rule, regulation, order, or requirement made pursuant to law, any matter is required or permitted to be supported, evidenced, established, or proved by the sworn declaration, verification, certificate, statement, oath, or affidavit, in writing of the person making the same (other than a deposition, or an oath of office, or an oath required to be taken before a specified official other than a notary public), such matter may, with like force and effect, be supported, evidenced, established, or proved by the unsworn declaration, certificate, verification, or statement, in writing of such person which is subscribed by him, as true under penalty of perjury, and dated, in substantially the following form:

(1) If executed without the United States: "I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (June 11, 2007)

"(RA Scocca Jr)"

As applied under 18 USC § 1621. Perjury.

Dr. Richard A Scocca Jr
scocca_richard@yahoo.com

appendix 'A'

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

October 25, 2006

NO: 06-2477

RICHARD A. SCOCCA JR.

Appellant

vs.

Cendant Mortgage Corporation, f/h/a PHH US Mortgage Corp.
(Eastern District of Pennsylvania Civil No. 04-cv-00704)

PRESENT: Van ANTWERPEN Circuit Judge

Motion by appellant for leave to file Petition for Rehearing Out Of Time

Opinion and Judgment entered 9/25/06

Carmella L. Wells
Case Manager

ORDER

The foregoing motion by Appellant for leave to file petition for **Rehearing Out Of Time** is **denied**.

By the Court,
/s/ Franklin S. Van Antwerpen
Circuit Judge

Dated: October 26, 2006

CLW/CH/cc: Richard A **Scocca** Jr
Jennifer A.L Battle, Esq.
Carl A. Solano, Esq